Editor's note: T & M site involved in decision was invalidated by Exxon Pipeline Co. v. Burns, A82-454 (D.Alaska Oct. 22, 1985), U.S. was not a party; See David A. Burns 30 IBLA 359

DAVID A. BURNS

IBLA 71-15 Decided June 15, 1972

Appeal from the decision (F-033554) Alaska state office, rejecting an application for trade and manufacturing site and cancelling claim.

Vacated and remanded.

Alaska: Trade and Manufacturing Sites -- Generally

An applicant whose business is headquartered in one location but who carries on essential aspects of it in a separate claimed area should not have his application to purchase rejected solely for that reason. It is not necessary that all functions or facets of the enterprise be carried on at the site claimed or that it is directly profitable. Such valuable purposes as demonstration and testing of products, though not directly profitable in themselves, may be carried out in such a manner as to further the enterprise within the meaning of the statute.

Alaska: Trade and Manufacturing Sites -- Generally

A casual connection between the use of a site not contiguous to the primary business property will not support a trade and manufacturing site claim. To the contrary, the burden is upon the claimant to show a direct and necessary purpose in furthering his enterprise.

Alaska: Trade and Manufacturing Sites -- Hearings

Where a decision by the land office is based on an erroneous interpretation of the law, the matter will be remanded for reexamination by the land office. If the matter then cannot be resolved, a contest should be entered and a hearing ordered.

APPEARANCES: Reginald J. Christie, Jr., for appellant.

OPINION BY MR. RITVO

David A. Burns has appealed from a decision (F-033554) of the Alaska State Office, Bureau of Land Management, dated July 23, 1970,

which rejected claimant's application to purchase a trade and manufacturing site of 80 acres and canceled his claim.

Burns filed his notice of settlement claim on December 4, 1964, in which, as amended, he stated that he had occupied the claim on September 11, 1964, for a motorcycle race track and boat harbor.

On August 29, 1969, appellant filed application to purchase the site and petition for survey. On January 6, 1970, the chief, division of land office, issued a show cause notice why the application to purchase should not be rejected and the claim canceled. Burns thereafter filed additional information to support his claim that the purchase should be approved. However, the state office of the Bureau of Land Management on July 23, 1970, rejected the application to purchase and canceled the claim. Counsel made his initial appearance for Burns at this time, and forwarded Notice of Appeal on August 21, 1970. In transmitting the case to this Board on August 26, 1970, the Bureau of Land Management noted for the first time that there was a conflicting claim Native Protest F-155. 1/

On September 15, 1970, appellant set out his statements of reasons and appeal and requested a hearing and oral argument.

Burns' application to purchase an 80-acre tract of unsurveyed lands was made under Section 10 of the Act of May 14, 1898, 30 Stat. 413, as amended, 43 U.S.C. § 687a (1970). Section 687a provides for the sale of not more than 80 acres of land in Alaska to:

> Any citizen of the United States * * * in the possession of and occupying public lands * * * in good faith for the purposes of trade, manufacture, or other productive industry * * * upon submission of proof that said area embraces improvements of the claimant and is needed in the prosecution of such trade, manufacture, or other productive industry. * * *

Regarding the period of time for filing, the Act of April 29, 1950, 43 U.S.C. § 687a-1 (1970), provides as follows:

> * * * Application to purchase claims, along with the required proof or showing, must be filed within five years after the filing of the notice of claim under this Section.

1/ Without answering the question, we note that if in fact a conflict with native claims existed it might properly be settled by the "Alaska Native Claims Settlement Act," Public Law 92-203, 85 Stat. 68 (December 18, 1971).

It would appear that time requirements have been met by the appellant. The issue is whether appellant has made a sufficient prima facie showing that within the five-year period he has engaged in a commercial operation to satisfy the requirement of the trade and manufacturing site law. Appellant alleges that he has met regulations in connection therewith, 43 CFR 2213.1-2(d)(1) (1970), renumbered 43 CFR 2562.3(d) (1972), which in pertinent part state:

> (d) Contents. The application to enter must show:
>
> (1) That the land is actually used and occupied for the purpose of trade, manufacture, or other productive industry[,] when it was first so occupied, the character and value of the improvements thereon and the nature of the trade, business, or productive industry conducted thereon and that it embraces the applicant's improvements and is needed in the prosecution of the enterprise. A site for a prospective business cannot be acquired under Section 10 of the Act of May 14, 1898 * * *.

The evidence introduced by Burns indicates that he is licensed by the State of Alaska to do business under the name of "Motorcycle Sales and Service", the principal place of business being in Anchorage, Alaska. The land in question is also located in the greater Anchorage area, although the distance from the shop to the area claimed for purchase is not specifically indicated. Burns alleges in his statement of reasons for appeal that the property contains:

> * * * an eighteen by twenty-four foot log cabin, excavation for a boat harbor and a three-tenths of a mile motorcycle race [track], the State championship motorcycle races were held on the property in 1965 and 1968, * * * admission fees were charged, and * * * the proceeds of food and beverage concessions were turned over to the Copper River Lions Club. * * * The property has been used extensively for the development of exhaust systems for snow machines and motorcycles in addition to other engine testing for Scorpion, Inc., of Crosby, Minnesota.

The property was described by Mr. Burns as ideal for testing of the exhaust systems which "are extremely noisy during testing and tuning but increase horse power of some racing engines as much as 10 to 12 percent once tested and designed to specific engines."

Furthermore, Burns states that he is the statewide distributor of motorcycle and snow machine vehicles having 42 dealerships in the State of Alaska with a sales volume in 1968 of $341,732, and that the site is important as a sales demonstration area. Burns refers to the filming of a movie on this property subsequently shown in many states.

His application to purchase stated that the cost of the improvements to the property was $3,500; approximately 25 acres are covered by the improvements.

An applicant whose business is headquartered in one location but who carries on essential aspects of it in a separate claimed area should not have his application to purchase rejected solely for that reason. It is not necessary that all functions or facets of the enterprise be carried on at the site claimed or that it be directly profitable. Such purposes as demonstration and testing of products though not directly profitable in themselves, may be carried out in such a manner as to further the enterprise within the meaning of the statute.

We do not wish to imply that a casual connection between the use of a site not contiguous to the primary business propertymay bring the site within then criteria of the statute. To the contrary, the burden is upon the claimant to show a direct and necessaryeconomic purpose in furthering his enterprise.

Apparently, the state office based its rejection of Burns' claim on the fact that the site was not the principal place of Burns' business. Since mere physical separation of the site from the primary place of business does not take an applicant outside the purposes of the trade and manufacturing statute, the state office should reexamine Burns' application.

Upon reexamination, if the facts warrant the granting of appellant's application, the land office should make a determination of whether the entire 80 acres is needed. Section 10 of the Act, supra, limits the right to purchase a tract of land in Alaska, for a trade and manufacturing site, to land actually occupied and used for such purpose. Lloyd Schade, A-30850 (December 19, 1962).

If from the facts adduced upon reexamination, the land office is not satisfied that sufficient necessary business was conducted on the site to warrant the granting of a trade and manufacturing site, or that the claimant is entitled to purchase the amount of acreage he has filed for, a contest should be initiated and a hearing ordered. If such hearing is ordered, the appellant will have the burden of presenting the evidence necessary to establish his assertion to rights of purchase as required by law. See Don E. Jonz, 5 IBLA 204 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision rejecting the application to purchase and cancelling the claim is vacated and the case is remanded to the land office for further proceedings consistent herewith.

_____
Martin Ritvo, Member

We concur:

_____
Joan B. Thompson, Member

_____
Frederick Fishman, Member